

From: Silvyn, Jeff
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To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing
Attachments: Title IX Comments - Pima Community College 6-11-2021.pdf

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Attached please find comments submitted on behalf of Pima County Community College District. Please do not hesitate to contact me with any questions. Thank you for the opportunity to comment.

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To: T9PublicHearing@ed.gov

Re: Written Comment: Title IX Public Hearing

Thank you for the opportunity to provide input for the Department's review of Title IX. These comments are submitted on behalf of Pima County Community College District, located in Tucson, Arizona.

Context for our comments

Pima College is an Hispanic Serving Institution with approximately 30,000 students attending each year. The College provides education for transfer to four-year universities and offers multiple certificates and degrees for direct employment. Around two-thirds of our students attend part-time and have significant work and family commitments to balance with their studies.

1. The 2020 Regulations define sexual harassment too narrowly to be effective

The 2020 changes to the definition of "sexual harassment" have set the bar so high that conduct most would agree is unacceptable is no longer covered. The current definition is not consistent with comparable standards in federal law. The definition needs to be modified to align with the Title VII definition of workplace sex discrimination and with the definitions used by the Department to address other forms of discrimination.

2. The process requirements are so complex and burdensome that students consistently opt out of the Title IX process

Since the 2020 regulatory changes were implemented, the vast majority of Pima College students who reported conduct possibly qualifying as a violation of Title IX have chosen to forgo their right to submit a formal Title IX complaint rather than face the litigation-like and intensely confrontational hearing processes required by the Department's current regulations. Fortunately for those individuals, Pima College maintained its own clear, equitable, and effective institutional policies to address complaints of sex-based harassment and students continue to use that process. Our experience indicates that for Title IX to effectively provide a means to address sex discrimination in education, the process requirements must be simple, efficient, and focused on minimizing the disruption in the educational pathway of all students involved, whether complainant, respondent, or witness. Otherwise, the students will continue to refuse to participate in the currently mandated Title IX process, making Title IX largely irrelevant.

Another consequence of the current regulations is that educational institutions must maintain a large infrastructure to support the process requirements (i.e. hearing officers, investigators, advisors all specially trained in the Title IX regulations) that is almost never used because students opt for the much simpler code of conduct process.

3. The process is excessively adversarial and creates inequity

The live hearing and cross-examination requirements assume that direct confrontation is the most effective way to ascertain the truth. Experience demonstrates the assumption was wrong. Students do not have the training or experience necessary to conduct an effective cross-examination. Only the most seasoned and well-trained advisor will be able to accomplish that. As a result, the side that can afford a litigation attorney has a significant advantage, or to maintain balance the College has to take on the burden of providing an experienced litigator for students who cannot afford one. With the student population we serve, the vast majority cannot afford an attorney as an advisor.

In addition, direct confrontation between the complainant and respondent at a hearing tends to inflame the situation. What both parties in most situations benefit from more is separation and a resolution that allows each to continue striving for their educational goals with any improper conduct addressed. That was the workable approach used before the 2020 regulation changes and still used in the College's student code of conduct process. Trained staff are fully capable of providing students with an opportunity to tell their story, asking probative questions, and reaching an appropriate outcome, without a mandate to stage a courtroom-like drama.

4. The regulations prevent consideration of probative evidence

Under the current regulations, any statement given by a complainant, respondent, or witness may not be considered if the individual is not subject to cross-examination at a live hearing. This requirement is more restrictive than the federal and state rules of evidence for a courtroom, when administrative proceedings normally allow more latitude. The statements made by individuals at or near the time of the events, to the police, or to an investigator are often highly probative. As currently drafted, the regulations prohibit a hearing officer from considering multiple statements made by the same individual if for some reason that person does not appear at the hearing. At a community college, where students are part-time and may not attend every semester, that can be a common occurrence. The rules should allow consideration of all relevant evidence.

5. The Department should more clearly define roles and responsibilities

The Department should clarify the roles and responsibilities of key institutional personnel. Although the current regulations provide that institutions may designate additional Deputy Title IX Coordinators, the regulations do not indicate if an institution may or may not, alternatively, designate two or more Title IX "Co-Coordinators" with effectively equal responsibility for Title IX compliance and administration at the institution. This has created confusion, especially since the regulations now apply the Title IX process to both student and employee matters.

The regulations also do not provide sufficient guidance on who should be identified as a "responsible employee" mandated to notify the Title IX Coordinator of sexual harassment. By

contrast, the Clery Act regulations provide criteria for which institutional personnel qualify as a “campus safety authority.” Further guidance on this subject would be helpful.

Conclusion

There is significant opportunity to revise the regulations so they will achieve key goals of Title IX - address sex discrimination in education through clear, simple standards. Instead, the current regulations require multiple layers of bureaucracy and administrative hoops. We know these requirements are excessively complex and intimidating because students have been voting with their feet, routinely opting out of the Title IX process and instead choosing the College’s well-established and tried student code of conduct process. If Title IX is to remain relevant and provide any meaningful remedy for sex discrimination, and sexual harassment in particular, the Department must reform the regulations.

Submitted by
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